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STATE OF ILLINOIS

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ILLINOISCOMMERCE COMMISSION

21st CENTURY TELECOM OF ILLINOIS, INC.)

CHIEF CLERK'S OFFICE

-vs-)

Illinois Bell Telephone Company)
d/b/a Ameritech Illinois)

Docket 00-0219

COMPLAINT AGAINST ILLINOIS BELL)
TELEPHONE COMPANY D/B/A)
AMERITECH ILLINOIS UNDER SECTIONS)
13-514 AND 13-515 OF THE PUBLIC)
UTILITIES ACT, AND REQUEST FOR)
EMERGENCY RELIEF PURSUANT TO)
SECTION 13-515(e))

COMPLAINT

21st Century Telecom of Illinois, Inc. ("21st Century"), by its undersigned attorneys, pursuant to Sections 13-514 and 13-515 of the Public Utilities Act (the "PUA") (220 ILCS 5/13-514 and 13-515), and 83 Ill. Adm. Code Part 766, files this Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") concerning the following four matters, each of which constitute a "prohibited action" under Section 13-514 of the PUA:

- (1) Ameritech's failure to provision inter-office trunk facilities within the time frames and in the manner required by its interconnection agreement with 21st Century;
- (2) Ameritech's failure to timely provision unbundled loops in a non-discriminatory manner, to notify 21st Century electronically if it will be unable to timely provision loops, and its failure to provide new provisioning commitment dates when it fails to meet its previous commitment dates; and
- (3) Ameritech's disabling of certain equipment used by Ameritech to provision AXT service within the buildings

in which 21st Century customers reside, which adversely impacts 21st Century's continued service to such customers.

21st Century also seeks emergency relief pursuant to Section 13-515(e) of the PUA. In support of this Complaint, 21st Century states as follows.

I. Background

1. 21st Century is an Illinois corporation, and a provider of competitive resold and facilities-based local and interexchange services in Illinois, pursuant to certificates granted by the Commission on March 11, 1998 in Docket 97-0558 and on June 4, 1999, in Docket 99-0136. 21st Century serves residence customers in the Chicago area. 21st Century's service area is largely coterminous with Chicago Cable Franchise Area 1. 21st Century's corporate parent, 21st Century Telecom Group, Inc., is a provider of cable television and Internet service. 21st Century's customers often purchase both telecommunications and cable television and Internet service from the 21st Century family of companies. The vast majority of 21st Century telephone customers are former Ameritech customers.

2. 21st Century entered into an interconnection agreement with Ameritech (the "Interconnection Agreement") on April 20, 1998, which was approved by the Commission in Docket 98 NA-14, under which 21st Century interconnects with and purchases unbundled network elements from Ameritech.

3. Section 251(c)(3) of the Telecommunications Act of 1996 requires Ameritech to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on "rates, terms and conditions that are just, reasonable and

nondiscriminatory.” 47 U.S.C. 251(c)(3). The FCC has interpreted Sections 251(c)(2) and 251(c)(3) to require not only that interconnection and unbundled network elements be “offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself,” but also that under the just and reasonable standard they be provided under terms and conditions “that would provide an efficient competitor with a meaningful opportunity to compete.” Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) at para. 315.

4. Ameritech has been given more than 48 hours to cure the conduct described herein, but has failed to do so. Attached as Exhibit A to this Complaint is a copy of the notice letter which was sent to Ameritech. This notice letter complies with the notice requirement of Section 13-515(c) of the PUA.

5. Although the conduct which is the subject of this Complaint is not necessarily dictated by the Interconnection Agreement and therefore it was not necessarily a condition precedent to filing this Complaint to do so, 21st Century has complied with the dispute escalation and resolution provisions contained in Section 28.3 of the Interconnection Agreement. 21st Century sent Ameritech written notice of the dispute on December 24, 1999, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and thirty days passed prior to 21st Century filing this Complaint. The parties engaged in numerous discussions of the issues raised in this Complaint both in-person, in writing and by telephone. The parties have been unable to resolve the dispute.

II. Request for Permanent Relief

A. Untimely Trunk Augments

6. Schedule 3.8-I of the Interconnection Agreement sets forth “Ameritech Interconnection Performance Benchmarks” with which Ameritech agreed to comply as it carries out its obligations under the Interconnection Agreement. Schedule 3.8-I includes trunk provisioning intervals. Pursuant to this Schedule, Ameritech is required to provision orders requesting 1-48 trunks within 14 business days, orders requesting 49-96 trunks within 15 business days and orders requesting 97 or more trunks within a time period to be negotiated. Attached as Exhibit C is a copy of Schedule 3.8-I.

7. Ameritech has failed to provision trunk augments within the required time frames. These problems have occurred with respect to orders that have not been rejected by Ameritech. This conduct amounts to a violation of the Interconnection Agreement.

8. In the absence of adequate inter-office trunking facilities, network problems result, and calls to and from 21st Century customers may not be completed. Instead, an all circuits busy announcement may be received. 21st Century customers have experienced “all circuits busy” conditions and have been unable to make or receive calls. This condition is being exacerbated as more customers select 21st Century as their local service provider. Ameritech has been made aware of this serious network degradation, but has been unwilling to resolve this problem. Ameritech’s failure to timely provision trunk augments pursuant to Schedule 3.8-I of the Interconnection Agreement thwarts 21st Century’s ability to provide adequate and reliable service. Thus, this conduct impedes the development of competition, in violation of Section 13-514 of the PUA.

9. It is 21st Century’s understanding and belief that Ameritech timely provisions

inter-office facility augments as needed to meet its retail customer service obligations. Indeed, it is 21st Century's belief that Ameritech would expedite any internal augments if not doing so would adversely impact service to its retail customers. Thus, Ameritech's conduct violates its obligation to provide 21st Century non-discriminatory access to the switched network.

10. Ameritech must be directed to comply with the trunk provisioning time frames as required by the Interconnection Agreement.

B. Untimely Loop Provisioning

11. Once an order for unbundled loops is placed with Ameritech, it is Ameritech's obligation to issue a firm order commitment ("FOC") that sets forth the date upon which the order will be completed. Ameritech is required to issue a FOC within 48 hours of receipt of the order unless the order is rejected by Ameritech. This FOC practice is addressed in Schedule 9.5, Section 1.7 of the Interconnection Agreement, and is also posted on Ameritech's TCNet website, which is accessed by all competitive local exchange carriers ("CLECs") that have interconnection agreements with Ameritech and sets forth Ameritech's practices with regard to its dealings with CLECs.

12. 21st Century relies upon the FOC dates quoted by Ameritech in its dealings with its customers. Once 21st Century is given a FOC date, it notifies the customer of the date upon which service will be installed. The 21st Century customer then relies upon that date. Thus, the FOC information provided by Ameritech is critical to 21st Century's dealings with its customers.

13. Ameritech frequently misses its FOC dates for provisioning unbundled loops to 21st Century. All of the FOC dates Ameritech has missed are dates required to be met

by the intervals in Schedule 9.10 of the Interconnection Agreement. Not only does Ameritech fail to provision loops within the time frame it has agreed to, it compounds the problem by providing notice that a FOC date is in jeopardy at the end of day, not through electronic communications, and fails to schedule new FOC dates once the original FOC date is missed. These actions violate Schedule 9.5, Section 1 .10 of the Interconnection Agreement. Ameritech's failure to meet its own provisioning commitments is impeding 21st Century's ability to effectively compete.

14. It is 21st Century's understanding and belief that Ameritech meets the commitment dates it quotes its retail customers for the provision of the comparable retail service, i.e., a network access line, or notifies them if such date will not be met and then reschedules the date. The Commission recently concluded, in its Order in Docket 99-0525, that the proper comparison for determining whether Ameritech is meeting its obligation to provide non-discriminatory access to network elements is from the retail customer's perspective. Since Ameritech meets its commitments to provision network access lines to retail customers, or notifies them if such dates will not be met, but does not do the same with respect to loops provisioned to 21st Century, Ameritech's conduct violates its obligation to provide 21st Century non-discriminatory access to unbundled network elements. So long as Ameritech refuses to provide 21st Century the same seamless service transitions Ameritech provides itself, 21st Century will be unable to effectively compete with Ameritech.

15. Ameritech must be directed to meet its FOC provisioning dates for unbundled loops, and to notify 21st Century electronically if it will be unable to do so and then provide a new FOC date.

C. Disabling of Facilities Related to AXT Service

16. Lobby Interphone Service, also referred to by Ameritech as AXT service, is a retail service provided by Ameritech to buildings which allows for the origination of telephone calls from a building lobby to an apartment through the use of lobby phones equipped with push buttons. This retail service offering is currently available only in buildings in which the service was offered before the service was grandfathered. Under Ameritech's tariff, the building, which is Ameritech's AXT customer, pays, among other things, a fixed monthly charge and a per subscriber charge determined according to the number of tenants in the building. (See Ill.C.C. No. 20, Part 20, Section 8)

17. This service is the only means by which a tenant in a building subscribing to AXT service is informed that it has a visitor and can let the visitor in without going to the building lobby. Thus, it is 21st Century's understanding and belief that AXT service is viewed as an essential service to the building tenant. If AXT service to a particular tenant is disabled, the tenant would have no way to answer its door without going to the lobby.

18. 21st Century's target serving area includes portions of Chicago in which many buildings subscribing to AXT service are located. Thus, many of 21st Century's target customers are tenants that have benefitted from AXT service by virtue of their tenancy in a building subscribing to such service. 21st Century has asked Ameritech for a list of the buildings that are served from the ten offices in which 21st Century is collocated in which AXT service is provided, but Ameritech has not provided 21st Century this information.

19. Ameritech has been disabling AXT service to 21st Century customers who are tenants in buildings which subscribe to Ameritech's AXT service. 21st Century is aware of no technical reason that this service must be disabled upon Ameritech's provision of an

unbundled loop to 21st Century, and Ameritech has not claimed there is a technical basis for the disconnections. While the AXT service is disabled to the particular tenant that has chosen to take local service from 21st Century, Ameritech continues to provision AXT service to the building and the other tenants (except the 21st Century customer) within the building continue to receive the benefits of that service.

20. In addition, Ameritech has improperly rejected and canceled orders for loops to 21st Century customers in buildings that subscribe to AXT service. In many cases, given the manner in which Ameritech administers loop orders, the result of Ameritech's cancellation of service is that the 21st Century customer has no phone service.

21. Ameritech refuses to agree to not disconnect AXT service to 21st Century customers. While Ameritech has proposed two suggested "solutions" to this problem, neither are satisfactory nor consistent with Ameritech's obligations under Federal and state law. Its first proposal is that 21st Century serve these customers via resale, rather than unbundled loops. This "solution" is not acceptable since it would prevent 21st Century from serving the customer on a facilities-basis as the law allows it to do. Ameritech's second "solution" is that 21st Century purchase additional channels from Ameritech through which AXT service would be made available to the 21st Century customer. This "solution" is not acceptable since it would artificially increase 21st Century's costs by imposing on 21st Century the obligation to purchase facilities that are already in place and made available to Ameritech's similarly situated customers. Ameritech's second alternative also ignores the fact that Ameritech would continue to provide the AXT service to the building and continue to collect revenues from the building for its provision of the AXT service. Ameritech has recently suggested a third "solution," which has yet to be implemented nor

proven effective to solve this problem for all customers impacted by AXT service.

22. The result of Ameritech's practice of disconnecting AXT service to a tenant that resides in a building subscribing to AXT service once that tenant switches its local phone service to 21st Century is to make 21st Century's service unattractive and unmarketable, since tenants would be less likely to switch local service providers if the consequence of doing so is that they can no longer answer their door via the phone. Thus, Ameritech's practice is impeding 21st Century's ability to effectively compete with Ameritech for a large group of potential customers.

23. Since Ameritech only disconnects AXT service to customers of 21st Century, this practice is clearly discriminatory.

24. Ameritech must be directed to discontinue its practice of disconnecting AXT service to 21st Century customers and its practice of canceling orders for loops to serve these customers.

III. Request for Emergency Relief

25. Section 13-515(e) of the PUA empowers the Commission to grant an order for emergency relief without an evidentiary hearing "upon a verified factual showing that the party seeking relief will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and that the order is in the public interest." 21st Century requests that such an emergency order be issued directing Ameritech to: (1) comply with the trunk provisioning time frames in its Interconnection Agreement; (2) meet its FOC provisioning dates for unbundled loops, and notify 21st Century electronically if it will be unable to do so and then provide a new FOC date; and (3) discontinue its practice of disconnecting AXT service to 21st Century

customers and its practice of canceling orders for loops to these customers, and immediately reconnect AXT service to those 21st Century customers whose service was disconnected. Attached as Exhibit D, and incorporated herein by reference, is a draft order granting emergency relief.

26. In order to establish the need for relief under Section 13-515(e), there are three statutory requirements which must be met, each of which has been met in this case. That 21st Century will likely succeed on the merits is evident from the allegations contained herein, As to the first two claims, Ameritech must meet its obligations under its Interconnection Agreement. Since 21st Century is simply requesting a directive to Ameritech to comply with its Interconnection Agreement, 21st Century will likely succeed on the merits. As to the third claim, the facts alleged, which must be assumed to be correct for purposes of emergency relief, indicate that Ameritech is retaliating against customers that switch to service from 21st Century. Ameritech has failed to comply with the Interconnection Agreement and has engaged in facially discriminatory conduct. Thus, 21st Century will likely succeed on the merits.

27. Second, 21st Century has suffered and continues to suffer irreparable harm as a result of Ameritech's conduct that is the subject of this Complaint. Damages alone cannot effectively redress 21st Century's loss of customers as a result of Ameritech's conduct. Neither can monetary damages fully compensate 21st Century for the damage to its reputation resulting from the service-related problems brought on by Ameritech's conduct. Since a competitive local exchange market has not yet developed in the markets in which it offers competitive local service, this problem is all the more serious. Moreover, even were one to try to estimate damages, it is not possible to know the true number of

customers 21st Century has lost and continues to lose as a result of Ameritech's conduct. Section 13-515(e) includes a provision for emergency relief to prevent this type of competitive harm.

28. Third, granting emergency relief would be in the public interest. Requiring Ameritech to immediately cease and desist from engaging in the conduct described in this Complaint will enhance local competition, a result which will benefit the public. This is the paramount goal of the Telecommunications Act of 1996.

29. The emergency relief contemplated by Section 13-515(e) is warranted where the requesting party can make a verified factual showing of the requirements specifically delineated in Section 13-515(e). The standard of proof which 21st Century must meet is preponderance of the evidence. 21st Century has met the statutory standard for relief under Section 13-515(e), and emergency relief should therefore be granted.

30. Given the impact that Ameritech's conduct has had and will have on the introduction of competition throughout the state, 21st Century is not willing to waive the time limits prescribed by Section 13-515(d).

WHEREFORE, 21st Century Telecom of Illinois, Inc. respectfully requests that the Commission:

- a. Issue an emergency order, pursuant to Section 13-515(e) of the PUA, granting the relief described in ¶ 26 above;

- b. Issue a final order consistent with the relief requested herein and more particularly in ¶¶ 6 through 25 above, and
- c. Grant such other and further relief as the Commission deems appropriate.

Dated: March 8, 2000

Respectfully submitted,

21st CENTURY TELECOM OF ILLINOIS, INC.



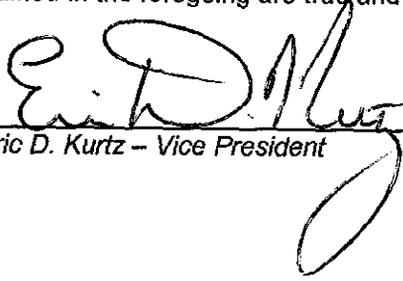
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COUNTY OF COOK)
) SS
STATE OF ILLINOIS)

VERIFICATION

I, Eric D. Kurtz, Vice President-Operations for 21st Century Telecom of Illinois, Inc., being first duly sworn, verify that the statements contained in the foregoing are true and correct to the best of my information, knowledge, and belief.


Eric D. Kurtz – Vice President

Subscribed and sworn to
before me this 8th day
of ch, 2000.


Notary Public

